

November 5, 2002

## **Summary of Second Negotiation Session on New Water Supply Agreement**

**Date of Meeting:** October 28, 2002  
**Place:** Santa Rosa Laguna Pumping Plant  
**Time:** 9:00 AM – 12:00 Noon  
**Parties Present and Represented:**  
Cities: Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Windsor  
Districts: North Marin, Marin Municipal, Sonoma County Water Agency,  
and Valley of the Moon  
Absent: Forestville Water District  
(See Attachment A for complete list of attendees).

### **Meeting Recap:**

Miles Ferris, WAC Chairperson, opened meeting inviting public comment. None were offered. Ricia Maxie, the IBN (Interest Based Negotiation) facilitator then opened the session by having parties introduce themselves and note any "elephants" they might be carrying around.

### **Voting Method:**

Since Forestville was absent, voting represents the consensus of nine Parties (Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Windsor, North Marin, Marin Municipal, and Valley of the Moon). Each of the nine had one vote to cast pursuant to the rule adopted by the WAC at its meeting of September 9, 2002, namely:

- Decision making style: Consensus (defined as all Parties agreeing they are either for an issue (thumbs up), can live with it (thumbs horizontal) or opposed (thumbs down).
- If Parties can't come to consensus, table the issue and deal with it at the end of the negotiation.

### **Review of Sept 23rd Negotiation Session - Framework Issue Area II - Conservation:**

John Nelson then reviewed the last session (September 23) results and output which focused on Framework Issues Area II – Water Conservation, reviewing his Report on same, noting he had written up the proposed agreement points assuming: (a) that the City of Petaluma would join the other parties in favoring collection of a water conservation charge by SCWA to be deposited in a special fund for water conservation programs to be decided on by the WAC, and (2) that Frameworks Issue E1, regarding inclusion of conservation targets contained in the Water Supply and Transmission System EIR, was overlooked by Parties at the last meeting but had universal support for inclusion in the agreement.

## **Information on MMWD and Windsor Agreements:**

Following up on a task assignment from the September 23, 2002 negotiation session, Mr. Nelson then confirmed that: (a) that copies of the MMWD/Agency and Windsor/Agency contracts had been distributed to all parties, (2) information on contract contents received from Ron Theisen of MMWD and John Johnson of Windsor had been sent/received by the parties.

**MMWD/SCWA Water Agreements:** He noted he had prepared a draft summary of the MMWD/SCWA agreements – marked draft since MMWD and the Agency had not yet had an opportunity to review same. This draft summary together with recap table was made available to the parties at the meeting. Since corrections (they pertain to some of the flow limits under the Exhibit B Agreement and addition of estimated capital cost provisions) have been made, it is included here as Attachment B. Also, with this report, Attachment C is added. It contains a table of monthly deliveries to MMWD from the aqueduct (via the North Marin Aqueduct connection) for the past 7 years and a graph of monthly use for the most recent fiscal year. Provided aqueduct capacity is installed and available (this includes a proviso that MMWD pay for its share of the planned new aqueduct that will roughly parallel the current aqueduct from Ely Pumping Plant to Kastania Reservoir) and subject to MMWD satisfying certain take-or-pay provisions, the agreements provide for up to 14,300 acre-ft of annual deliveries. SCWA must currently use (or share in the event of drought or other shortage of supply) stored water in Lake Sonoma and Lake Mendocino to “firm-up” 9,300 afa of this amount. MMWD may increase this “firmed-up” amount to 14,300 afa by making a further fair-share contribution to the Warm Springs Dam Sinking Fund. Peak month summer-time deliveries (May 1 through Sept. 30) cannot exceed 12.8 mgd without the prior written consent of the SCWA. Winter month deliveries can reach 23.0 mgd. In FY 2001-02, MMWD received 8,315 acre-ft from the aqueduct. The peak summer month delivery occurred in May of 2002 and was 681 acre-ft (7.2 mgd).

**Town of Windsor/SCWA Water Agreements:** Mr. Nelson then briefed the parties on the Windsor’s three agreements. Two agreements involve service direct from the aqueduct system: one for service the Santa Rosa Aqueduct in the County Airport Area and the other for service to some customers in the Slusser/Mark West Station Rd area). He noted Windsor paid the water rate charged Other Agency Customers which amounts to 120% of the highest rate paid by a Water Contractor (WAC member), on delivers of about 400 to 500 acre-ft per annum (afa). He noted the average day peak month rate of flow was about 1.4 mgd. He noted the third contract covered Windsor’s direct diversion from the Russian River via its own wells and that it was entered into about 1 year after Windsor applied for its own appropriative water right. He noted the agreement caps Windsor’s diversions at a maximum rate of 7.2 mgd and an annual amount of 4,725 acre-ft and that during shortage periods (shortage of water available in the River and from storage reservoirs) that Windsor’s diversions are controlled by the Agency using essentially the same allocation provisions contained in the first set of allocation criteria set forth in the 11<sup>th</sup> Amended Agreement (refer Section 3.5 of said agreement). With this

report, Attachment D is added. It contains a table of monthly deliveries to Windsor the aqueduct system for the past 7 years and a graph of monthly use for the most recent fiscal year.

**Discussion by Parties on MMWD and Windsor:** Several of the parties expressed the need for information on the pros and cons of MMWD and/or Windsor changing their contract status. Chris DeGabriele noted that NMWD had made a cost analysis concerning MMWD's joining but that such an analysis must be based on forecasts of use and other assumptions and that MMWD should provide its own analysis. Although no vote was taken, it was agreed that SCWA would confer with MMWD and Windsor and develop an analysis showing the pros and cons, cost impacts, entitlement impacts, etc. of each of these entities joining the new agreement or remaining in current their contract status. Mr. Poole stated that such an analysis would take 60 to 90 days. He said he would provide a progress update at the next negotiation session and try to complete the work in 60 days or so.

#### **Consultant's Comments on Water Conservation Language Proposed by SCWA:**

Following the first negotiation session and after receipt of the consultant's report on same, Mr. Poole, as determined at the first negotiation session, followed through with pertinent legal language he felt he could recommend to his Board of Directors. This language was distributed to the Parties by the Agency on October 21, 2002. Mr. Nelson was asked to comment on same and said the Agency's language was consistent with the "conservation consensus" reached by contractors at the first session. He noted the Agency's draft also assumed Petaluma would agree to the Water Conservation Fund approach supported by the other Parties at the first session. He noted further that: (a) the Agency draft contained no conservation targets; (b) both his draft language and the Agency's granted the WAC the authority of deciding what conservation programs and projects Water Conservation Fund monies would be spent on; and (c) the Agency's draft contained some additional points not related to the Conservation issue (i.e. language pertaining to local supply and recycled water projects, language defining funds other than the Water Conservation Fund, etc.) and that these items had not yet been discussed or agreed upon by the Parties.

#### **Follow-up Discussion/Decisions by Parties on Water Conservation Issues:**

Petaluma reported its City Council had not yet taken up the Water Conservation Fund matter but would before the next negotiation session.

A number of issues were raised and discussed and rather than vote on them the Parties decided that a subcommittee called the Water Conservation Subcommittee and comprised of Chris DeGabriele, Joe Gaffney, Steve Simmons, Virginia Porter, and Al Bandur should meet and focus in more detail on these issues, namely:

- Impact of MMWD payments to the proposed Water Conservation Fund (Water Contractor status vs. current status)

- Petaluma's position on Agency collecting charge for Water Conservation Fund
- Impact of Windsor payments to the proposed Water Conservation Fund (Water Contractor status vs. Other Agency Customer status)
- Conservation targets (amount and whether to include in agreement or not)
- Process for identifying/approving water conservation projects/programs.

Randy Poole said he would attend the subcommittee meeting representing the Agency. Toni Bertolero asked to be notified of the agenda for the meeting so that Cotati's comments could be considered. Mike Martini noted John Nelson should attend the meeting and prepare resulting agreement points/language for consideration by all Parties at the next negotiation session.

The Parties next took up the Framework Issues shown on Attachment E (included for your ready reference).

### **Framework Issue Area I: Overarching Provision Regarding Planning and Consideration of Environmental Impacts**

The discussion evolved until it was apparent a consensus was available. Although no formal vote was taken, the resulting consensus of the Parties (except for SCWA who, as in the first negotiation session opted to have consensus represent the contractors' view and reserving for SCWA the option to respond independently) was:

*..... that Framework Issue A (refer Attachment E) should be included at some appropriate location in the new agreement but that the language should be amended to recognize the role of organizations who are taking the lead in watershed planning management (such as the Russian River Watershed Council and North Bay Watershed Association).*

The consultants proposed language implementing this consensus is shown in strikeout format relative to the 11<sup>th</sup> Amended Agreement language on Attachment F.

### **Framework Issue Area VII: Agreement Governance**

Before launching into the discussion on governance, Mr. Nelson provided two handouts entitled:

- Draft: WAC Voting Proposed in New Agreement vs. 11<sup>th</sup> Amended Agreement
- Powers of the WAC enumerated in the 11<sup>th</sup> Amended Agreement

Discussion then proceeded with issues of WAC organization, voting method and voting on amendments being principal concerns.

Consensus was reached on the first three sentences of Framework Issue S as follows:

***“Reorganize WAC into a two-tier committee – technical and policy. The technical committee to meet monthly as needed and be comprised of an appointed staff representative from each local agency signatory to the agreement. The policy committee to meet quarterly as needed including two semiannual meetings with Directors of the SCWA and to be comprised of an elected official appointed by the elected body of each agency signatory to the agreement.” Voting: (9/0/0) (for/can live with/ opposed)***

The consultant’s proposed language implementing this consensus, shown in ~~strikeout~~ format relative to the 11<sup>th</sup> Amended Agreement language, is also contained on Attachment F.

Regarding the last sentence of Framework Issue S concerning voting (current voting provides for more than 50% of the weighted votes based on entitlement peak month flows plus majority of WAC members), Pam Nicolai stated that the part of the method based on peak month entitlement flow was not preferred by MMWD and that other methods should be considered. None of the parties objected to the part of the method requiring a majority vote of members. After discussion, the consultant offered to present some alternative comparisons for the parties to consider at the next session

At this point, negotiators ran out of time and determined to defer discussion of the other governance issues to the next session.

#### **Follow-up Tasks:**

1. Consultant to provide recap of meeting including recommended language implementing consensus reached on:
  - a. Overarching Provision Regarding Planning and Consideration of Environmental Impacts (Framework Issue A) and,
  - b. Governance (Framework Issue S)
2. Water Conservation Subcommittee to meet, review and provide information and their view on following:
  - a. Impact of MMWD payments to the proposed Water Conservation Fund (Water Contractor status vs. current status)
  - b. Petaluma’s position on Agency collecting charge for Water Conservation Fund
  - c. Impact of Windsor payments to the proposed Water Conservation Fund (Water Contractor status vs. Other Agency Customer status)
  - d. Conservation targets (amount and whether to include in agreement or not)
  - e. Process for identifying/approving water conservation projects/programs.
3. Consultant to provide recommended language implementing consensus items (2d. and 2e.) developed by Water Conservation Subcommittee
4. SCWA to confer with MMWD and Windsor and develop an analysis showing the pros and cons of each of these entities joining the new agreement as signers or remaining in current contract status.
5. Based on statements made at the first negotiation session, SCWA may respond to the report on Negotiation Session 2 (more specifically Attachment F of this report) with

its view of acceptable agreement language and distribute same to the Parties before the next session.

**Next Negotiation Session:** 9:00 AM-12:00 PM, November 25, Santa Rosa's Laguna Treatment Plant

**Agenda Items for Next Negotiation Session:**

- Recap of prior session by JONWRM
- Feedback information from Water Conservation Subcommittee on Conservation Issues (including recommendations regarding conservation targets and process for identifying/approving conservation programs)
- Update from SCWA on MMWD and Windsor analyses.
- Review suggested language for Overarching Planning and Environmental Issues.
- Review suggested language for WAC governance (Framework Issue S).
- Discuss and attempt to reach consensus on remaining Governance Issues, (last sentence of Framework Issue S regarding voting and Framework Issues T, U, V and W).

## **Attachment A**

### **10/28/02 Session Attendees**

Syed Rizvi, North Marin Water District  
Chris DeGabriele, North Marin Water District  
Joe Netter, City of Rohnert Park  
Jake Mackenzie, City of Rohnert Park  
Vicki Vidak-Martinez, City of Rohnert Park  
Joe Gaffney, City of Rohnert Park  
Bill Stephens, City of Rohnert  
John Nelson, Water Resources Management  
Miles Ferris, City of Santa Rosa  
Mike Martini, City of Santa Rosa  
Jane Bender, City of Santa Rosa  
Virginia Porter, City of Santa Rosa  
Ricia Maxie, City of Santa Rosa  
Randy Poole, Sonoma County Water Agency  
Tim Smith, Sonoma County Board of Sups and Water Agency  
Mike Healy, City of Petaluma  
Steve Simmons, City of Petaluma  
Mike Ban, City of Petaluma  
Mike Bierman, City of Petaluma  
Pam Torliatt, City of City of Petaluma  
Mike Fuson, City of Sonoma  
Al Bandur, City of Petaluma  
Lee Harry, Valley of the Moon Water District  
Dave Willer, Valley of the Moon Water District  
Paul Berlant, Town of Windsor  
Matt Mullan, Town of Windsor  
Pam Nicolai, Marin Municipal Water District  
Jack Gibson, Marin Municipal Water District  
Toni Bertolero, City of Cotati  
Pat Gilardi, City of Cotati

Public Attendees: Brenda Adelman, RRWPC  
Bob Anderson, United Winegrowers

## **Attachment B**

Draft: 10/22/02

### **Summary of Marin Municipal Water District/SCWA Agreements**

By John Olaf Nelson Water Resources Management

### **Supplemental Water Supply Agreement**

This agreement contains recitals, a short body, signatures plus two exhibits which show amendments to two prior agreements denoted as follows:

- Exhibit A - Third Amended Water Supply Agreement, and
- Exhibit B - Amendment to the Agreement for Sale of Water between Sonoma County Water Agency and Marin Municipal Water District.

The two amended agreements are separately executed, standalone and are referred to separately in the 11<sup>th</sup> Amended Agreement for Water Supply (11<sup>th</sup> Amended).

Attached is a brief table recapping delivery limits and charges potentially available under the agreements. In the past 5 years MMWD's purchases have grown from 7,177 afa to 8,315 afa or 58% of the maximum allowed under the agreements.

Date of Agreements: January 25, 1996

### **Third Amended Offpeak Water Supply Agreement (Exhibit A Agreement):**

Termination Date: June 30, 2014

Renewal Clause: "Upon request of MMWD, Agency agrees to enter into renewal agreements for periods not to exceed the term of renewals of the Agreement for Water Supply upon the same terms and conditions contained herein."

Water Supply Provided:

Annual: 4,300 acre-ft per annum (afa)

Maximum Rates of Delivery from Transmission System:

Peak Summer Months:	3.8 mgd (May 1 -> Sept 30)*
Offpeak Months:	8.0 mgd (Oct 1 -> April 30)

\* This is the maximum rate of flow "without the prior written consent of the Agency"



### Agency Obligations to Deliver Water:

General: Agency will release water from Lake Mendocino or Lake Sonoma when necessary. Agency will make all reasonable efforts to deliver water at Kastania.

### Conditions:

Deficiency in Water Supply: If by reason of drought, other causes beyond the control of the Agency or any changes in the amounts of water imported by the Potter Valley Project into the Russian River, a deficiency occurs, deliveries to MMWD are subject to the *first set* of allocation provisions set forth in Section 3.5 of the 11<sup>th</sup> Amended. These treat MMWD's water (4,300 afa maximum) as *equal in priority* to the entitlement of the Regular Contractors (Water Contractors and Other Agency Customers). The Water Contractors are defined in the 11<sup>th</sup> Amended to be Cotati, Forestville WD, North Marin WD, Petaluma, Rohnert Park, Santa Rosa, Sonoma and Valley of the Moon WD. Other Agency Customers, the 11<sup>th</sup> Amended mean the Agency, the County of Sonoma, Larkfield Water Company, Lawndale Mutual Water Company, Kenwood Village Water Company, Penngrove Water Company, City of Sebastopol, Windsor and Occidental Community Services District.

Deficiency in Capacity: In the event of temporary impairment of the capacity of the Transmission System, deliveries to MMWD are subject to the *second set* of allocation provisions set forth in Section 3.5 of the 11<sup>th</sup> Amended. These treat MMWD's water (3.8 mgd maximum in the summer months) as *second in priority* to delivery of entitlements (including excess entitlements) of Regular Contractors. Entitlements of Regular contractors are defined in Sections 3.1 and 3.2 of 11<sup>th</sup> Amended. Excess entitlements are described in Section 3.3 (a) of the 11<sup>th</sup> Amended. The Transmission System is defined in Section 1.1 (hh) of the 11<sup>th</sup> Amended as: ““Transmission System” means the Agency's existing water production, storage, treatment and transmission facilities including but not limited to the Santa Rosa, Petaluma, Sonoma and Forestville Aqueducts, the Russian River-Cotati Intertie, emergency wells, the Warm Springs Hydroelectric Project, future water production, storage, treatment and aqueduct facilities to be constructed pursuant to this agreement (11<sup>th</sup> Amended), and a new aqueduct to be constructed generally paralleling the portion of the Petaluma Aqueduct that extends from the Ely Pumping Plant to Kastania Reservoir.”. Note that Section 3.12 of the 11<sup>th</sup> Amended includes the following exception: “However, delivery of water to Marin Municipal shall not be reduced or curtailed because of inadequate capacity in the new aqueduct to be constructed generally paralleling the portion of the Petaluma Aqueduct that extends from the Ely Pumping Plant to Kastania Reservoir.”

Payment Provisions:

Take or Pay Amount: 4,300 afa.

Water Charges: Highest rate paid for “entitlement” deliveries by any of the parties to the Agreement for Water Supply (currently the 11<sup>th</sup> Amended) or any amendment or successor agreement thereto plus Russian River Conservation Charge plus Russian River Projects Charge (latter is capped at \$20/af).

Section 4.17 of the 11<sup>th</sup> Amended defines the Russian River Conservation Charge as a charge paid in lieu of the property taxes levied by the Agency on property in Sonoma County, to pay the capital, operation and maintenance costs associated with the Warm Springs Dam Project, and Russian River Projects Charge shall be paid in lieu of the property taxes levied on property in Sonoma County and other Agency general fund monies which are transferred to the Agency's Russian River Projects Fund. Purposes for which this fund can be used are defined in Section 1.1 (aa) of the 11<sup>th</sup> Amended as: "Russian River Projects Fund" means the fund established by the Agency to pay or partially pay for: (1) carrying out the Agency's Coyote Valley Dam Project and Warm Springs Dam Project channel-stabilization works obligations to the United States Government and the State of California under Agency Board of Directors Resolutions No. 6847 adopted May 24, 1955, No. 7798 adopted September 27, 1955, No. DR00793-1 adopted September 25, 1961 and Resolution No. DR68485 adopted December 23, 1980; (2) securing and defending appropriative water rights which are necessary for the realization of the full benefits of the Coyote Valley Dam and Warm Springs Dam Projects; (3) the Agency's share of the United States Government's investment, operation and maintenance, and major replacement costs associated with the Coyote Valley Dam and Warm Springs Dam Projects; (4) the acquisition of all or part of the Potter Valley Project or contributions made to the Project owner to insure the continued operation of all or part of the Project; and (5) fishery mitigation and enhancement projects undertaken by the Agency in the Russian River and Eel River and their tributaries.

For FY 2002 – 2003, these charges were:

Highest rate paid by a Water Contractor (Petaluma Aqueduct).....	\$397.90/af
Russian River Conservation Charge.....	36.49/af
Russian River Projects Charge.....	<u>9.15/af</u>
Total.....	\$ 443.54/af

**Amendment to the Agreement for Sale of Water Between the SCWA and MMWD  
(Exhibit B Agreement):**

Termination Date: June 30, 2014

Renewal Clause: Same as Third Amended Offpeak Water Supply Agreement except Agency may make reasonable adjustments to water charges.

Water Supply Provided (Note that the following amounts do not include flows made available under the Exhibit A Agreement.):

Annual: 10,000 afa

Maximum Rates of Delivery from Transmission System:

Peak Summer Months: 9.0 mgd (May 1 -> Oct 31)

Offpeak Months:

November and April 12.0 mgd

Dec 1 -> Mar 31 15.0 mgd

Agency Obligations to Deliver Water:

General: Agency will release water from Lake Mendocino or Lake Sonoma when necessary insofar as the first 5,000 afa is concerned. Releases from storage for the last 5,000 afa are much more complex and are explained in the first "Condition" explained below.

Agency will make all reasonable efforts to deliver water at Kastania. Recital "O." of the Exhibit B agreement recognizes the Agency's need to construct parallel additions to the Transmission System and states: "... and Agency will need to construct a new aqueduct from the Ely Pumping Plant to Kastania Reservoir, roughly paralleling portions of the existing Petaluma Aqueduct, which would not be necessary absent this Agreement." Section 13 of the Exhibit B agreement, entitled "Construction of New Ely-to-Kastania Aqueduct" provides that if Agency initiates construction of a new aqueduct roughly paralleling the portion of the existing Petaluma Aqueduct that extends south to Ely Pumping Plant, then MMWD may request Agency to construct the new portion extending from Ely To Kastania with capacity to meet MMWD's maximum delivery limits specified in both the Exhibit A and Exhibit B agreements. It goes on to state: "Construction of this new Ely-to-Kastania aqueduct shall be financed by cash deposits and payments from MMWD." MMWD's share of this cost is estimated at \$4,850,000 based on information contained in the SCWA Water Supply and Transmission System Project Economic and Financial Report, September 2001.

Conditions:

Condition Pertaining to Firming Up Last 5,000 afa Block of Water: The agreement provides that annually, by March 1st, the Agency shall determine the amount of water available for the next fiscal year. Water shall be deemed to be available if Agency has water in excess of the amounts that it needs to supply all of its other customers and contractors (this term is very broadly defined in the Exhibit B agreement as: “Other Customers and Contractors” means the North Marin WD and all present and future Agency customers within Sonoma County, including all entities within Sonoma County that receive or will receive water from the Transmission System or other water conveyances facilities, and all entities within Sonoma County that divert or will divert water purchased from the Agency directly from the Russian River or Dry Creek.”), to meet its obligations under Exhibit B contract, to meet its obligations under any contract between Agency and Mendocino County Russian River Flood Control and Water Conservation Improvement District in existence on October 22, 1991, to meet its obligations to appropriative water rights owners, to meet instream flow requirements, and to maintain a Prudent Storage Reserve (water levels in Lake Sonoma and Mendocino to exceed 292 ft and 685 ft, National Geodetic Vertical Datum – 1929, respectively), considering hydrologic conditions, Agency’s offstream water production capacity, the probable effects of water conservation efforts on water demand and other relevant factors.” In 1996, MMWD paid a lump sum of \$3,000,000 to waive this determination for the first 5,000 afa of the 10,000 afa by “buying” into the “yield” of Lake Sonoma. To waive the determination for deliveries of the second 5,000 afa, MMWD must make another lump sum payment by no later than July 1, 2005. The payment was calculated by Agency to be \$5,775,878 if payment had been made by September 30, 2002. It can be expected to increase if payment is deferred to the deadline date. This amount represents a “fair share” of the cost of an additional 5,000 af of Lake Sonoma’s water supply yield and is based on a formula that takes into account the then current value of the Warm Springs Dam Sinking Fund, payments made to Federal Government for storage space, and other relevant factors.

Deficiency in Water Supply: If by reason of drought, other causes beyond the control of the Agency or any changes in the amounts of water imported by the Potter Valley Project into the Russian River, a deficiency occurs, deliveries to MMWD are subject to the *first set* of allocation provisions set forth in Section 3.5 of the 11<sup>th</sup> Amended. These treat MMWD’s water (5,000 afa maximum unless MMWD exercises option to “buy” yield for the remaining 5,000 afa in which case the amount increases to 10,000 afa) as *equal in priority* to the entitlement of the Regular Contractors (Water Contractors and Other Agency Customers).

Deficiency in Capacity: In the event of temporary impairment of the capacity of the Transmission System, all delivers to MMWD are subject to the

*second set* of allocation provisions set forth in Section 3.5 of the 11<sup>th</sup> Amended. These treat MMWD's water (up to 9.0 mgd maximum in summer months) as *second in priority* to delivery of entitlements (including excess entitlements) of Regular Contractors. The qualifier "up to" is used here, as the actual summer maximum flow rate is subject to MMWD exercising certain take or pay provisions. Note that Section 3.12 of the 11<sup>th</sup> Amended includes the following exception: "However, delivery of water to Marin Municipal shall not be reduced or curtailed because of inadequate capacity in the new aqueduct to be constructed generally paralleling the portion of the Petaluma Aqueduct that extends from the Ely Pumping Plant to Kastania Reservoir."

#### Payment Provisions:

Take or Pay Amount: Varies from minimum of 1,000 afa to max/ of 4,230 afa.

The agreement contains a "ratcheting" arrangement wherein MMWD can increase its annual Maximum Delivery Limit up to the full 10,000 afa (and the corresponding maximum delivery rates for the various periods of the year noted above). Ultimately the maximum take or pay amount could be 90% of 9,000 af or 8,100 afa less credit for water paid for under the Exhibit A Agreement of 4,300 afa. However for this maximum to be reached, sufficient Transmission System capacity must be online and available for delivery of MMWD's full flow rates and MMWD must need or choose to pay for said water and must have ramped up and/or properly exercised the take or pay options. Supply must be available in storage or the Russian River as well. At this point MMWD has firmed up one-half of the latter amount available in the agreement. Notwithstanding, in many years (wet and probably normal years) the full amount would likely be available.

Water Charges: Operation and Maintenance Charge paid by Water Contractors. plus a fixed capital charge of \$96/af plus the Russian River Conservation Charge plus Russian River Projects Charge (latter is capped at \$20/af).

Note: The agreement provides that the fixed capital charge can be increased if Agency constructs water treatment facilities to improve or protect the quality of the water delivered by the Transmission System, or additional groundwater wells, aquifer storage and recovery wells, or other offstream water-production facilities with capacity to improve the reliability of the delivery capacity of the Transmission System, or acquires all or part of the Potter Valley Project or constructs improvements to or replacements of Potter Valley Project facilities if and to the extent such acquisitions and construction are financed from the proceeds of a sale of bonds or other debt instruments by the Agency. The increase is calculated by a formula that is estimated to result in MMWD's share being about 12% of the annualized unit (\$/af) cost of these facilities.

For FY 2002 – 2003, these charges were:

O&M Charge.....	\$339.02/af
Capital Charge.....	96.00/af
Russian River Conservation Charge.....	36.49/af
Russian River Projects Charge.....	<u>9.15/af</u>
Total.....	\$ 480.66/af

### Recap of MMWD's Delivery Limits and Water Charges per Supplemental Water Supply Agreement

	Units	Supplemental Water Supply Agreement		Potential Total (3)
		Exh. A - Third Amended OffPeak (1)	Exh. B - Sale of Water Agree.(2)	
Current Term (4):		June 30, 2014	June 30, 2014	
Last Amended:		Jan. 25, 1996	Jan. 25, 1996	
Delivery Period:				
Annual	afa	4,300	10,000	14,300
May 1 - Sep 30	mgd	3.8	9.0	12.8
Oct 1 - Oct 31	mgd	8.0	9.0	17.0
Nov 1 - Nov 31	mgd	8.0	12.0	20.0
Dec 1 - Mar 31	mgd	8.0	15.0	23.0
Apr 1 - Apr 30	mgd	8.0	12.0	20.0
Water Charges:				
Components:		Highest of any Prime + RR Cons. Chg + RR Projects Chg (up to \$20/af)	O&M chg paid by all Primes + RR Cons. Chg + RR Projects Chg (up to \$20/af) + Capital Chg of \$96/af + 12% of "additional projects" (5)	
Total Charge for FY 2002-03	\$/af	\$443.54	\$480.66	

**Notes:**

- (1) Third Amended Off-peak Agreement provides 4,300 afa in the Russian River for MMWD to be provided from releases, as necessary, from Lake Sonoma or Mendocino. Deliveries from the aqueduct are subject to the entitlements of the Water Contractors and Other Agency Customers.
- (2) MMWD paid \$3 million (share of Warm Springs fund) for 5,000 afa yield from Lake Sonoma to "firm up" the availability of the first 5,000 afa block and put it on a par with the 4,300 afa made available under the Third Amended Offpeak Agreement. MMWD has until July 1, 2005 to exercise option to similarly "firm up" the remaining 5,000 afa block. The current estimated cost to do so is \$5.78 million.  
Deliveries from the aqueduct are subject to the entitlements of the Water Contractors and Other Agency Customers, except that lack of capacity in the new Ely to Kastania aqueduct segment cannot be a reason for not delivering water to MMWD - assuming MMWD pays its allotted share of said aqueduct, currently estimated to be \$4.85 million.
- (3) Actual amounts depend on completion of new parallel aqueducts, MMWD's participation in Ely to Kastania segment, MMWD's exercising its full take or pay options, Water Contractor and Other Agency customer entitlements, and some other factors.
- (4) Agreement contains renewal clause basically on same terms and conditions.
- (5) A formula calculates a per-acre ft charge for "additional projects" the SCWA may construct. They are limited to water treatment facilities to improve/protect quality of Transmission System (TS) water, additional groundwater wells, aquifer storage and recovery wells and other offstream water-production facilities with capacity to improve the reliability of delivery capacity of TS (all must be constructed by SCWA), acquisition of all/part of Potter Valley Project (including replacement costs if acquired). As of this date, "additional projects" charge is \$0.00.

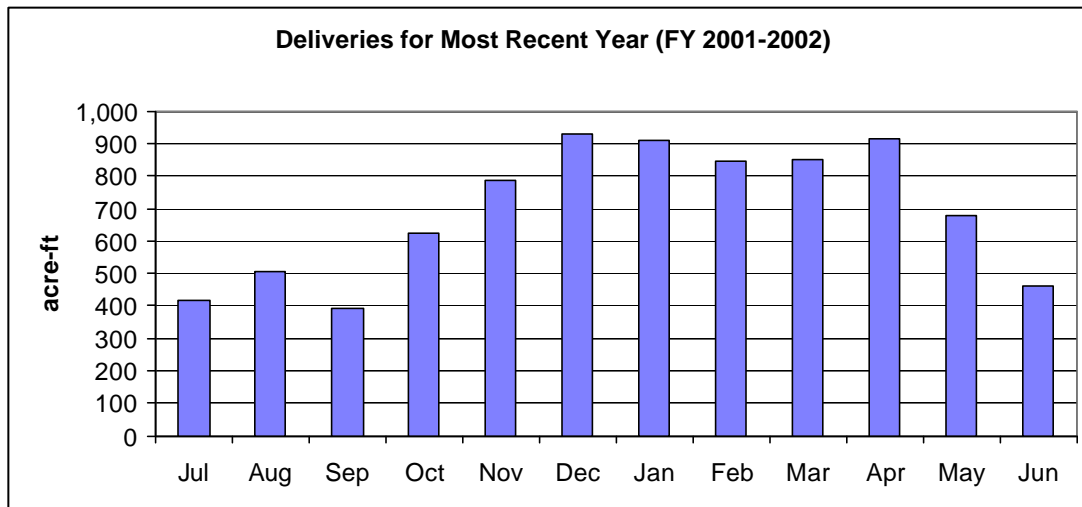
### Attachement C

#### Marin Municipal Water District Monthly Aqueduct Deliveries (Offpeak Water Agreements), acre-ft

(From SCWA Aqueduct at Kastania Reservoir, then wheeled through North Marin Aqueduct)

FY Ending Jul	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
1997	616.8	344.9	435.4	612.3	515.3	676.8	403.4	749.3	773.2	632.9	711.2	392.2	6864
1998	446.7	456.9	571.5	345.8	981.6	831.7	752.3	568.4	648.3	572.3	517.6	472.1	7165
1999	539.6	537.5	538.1	761.3	641.8	853.1	613.5	694.5	745.7	866.4	511.3	587.2	7890
2000	533.4	608.3	548.4	582.4	776.0	700.6	804.5	751.1	807.2	593.9	651.9	560.9	7919
2001	558.9	609.4	378.4	803.3	638.1	804.1	923.5	797.7	834.1	742.5	477.9	461.6	8029
2002	415.5	504.1	390.8	624.1	787.1	928.3	909.8	843.6	853.5	914.2	680.9	463.2	8315

Source: SCWA Sales Records



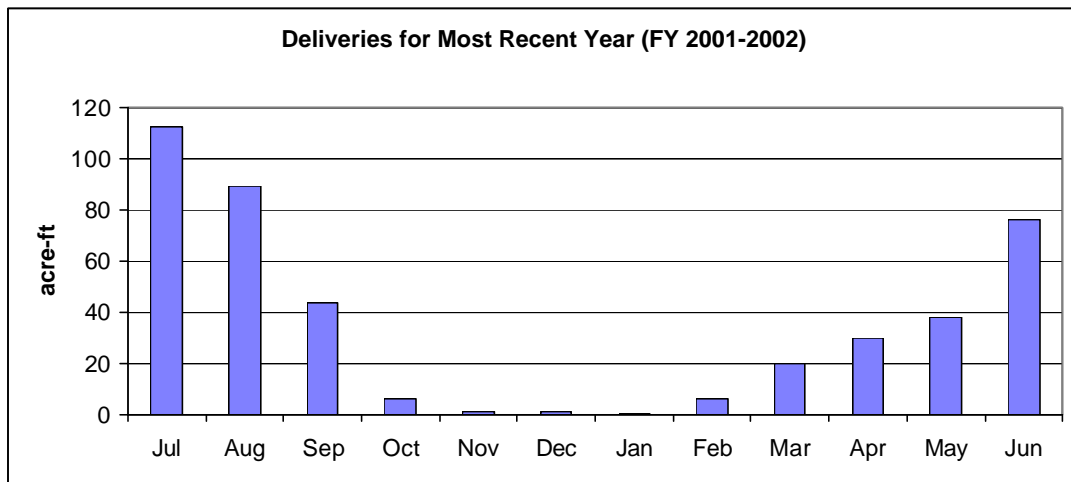


### Attachement D

#### Town of Windsor (Other Agency Customer) Monthly Aqueduct Deliveries, acre-ft (County Airport and Slusser/Mark West Station Rd areas)

FY Ending Jul	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
1997	134.8	90.7	52.5	5.7	12.6	1.5	25.4	1.8	5.2	8.6	40.4	84.2	463
1998	35.1	21.5	22.1	4.3	4.1	5.1	1.0	20.8	1.9	2.5	3.6	26.4	148
1999	55.2	57.8	13.9	5.2	2.4	3.0	1.2	1.1	3.5	5.1	40.2	133.3	322
2000	133.7	87.0	118.8	94.9	11.6	1.3	0.9	1.0	6.1	5.4	6.8	42.8	510
2001	115.6	112.5	17.7	5.7	1.8	1.5	1.5	2.4	1.6	6.4	17.9	86.4	371
2002	112.1	89.5	43.8	6.3	1.1	1.2	0.7	6.1	19.7	30.0	38.0	76.4	425

Source: SCWA Sales Records



## **Attachment E**

**Topics I and VI from “Framework Issues to be Included in New Agreement Negotiation”** (Framework Issues List as revised by WAC on June 3, 2002, after considering changes recommend by the public at Workshop No. 4)

### **“I. Over-arching Provision Regarding Planning and Consideration of Environmental Impacts**

- A Provide ample opportunity for input from the public and periodically quantify the best possible water resource mix which optimizes provision of a reliable and economical supply of high quality water and related services while promoting a healthy environment. Quantification shall include consideration of all available supplies including conservation, recycling, ground water and surface water; and, take into account levels of reliability (including the reliability of Eel River diversions), watershed needs and environmental impacts. Maximizing opportunities that will result in minimizing or avoiding environmental mitigation and restoration costs shall be a high priority. The WAC shall determine how frequently this planning effort or elements of same will be undertaken.”

### **“VII. Agreement Governance**

- S Reorganize WAC into a two-tier committee - technical and policy. The technical committee to meet monthly as needed and be comprised of an appointed staff representative from each local agency signatory to the agreement. The policy committee to meet every other month as needed including two semiannual meetings with Directors of the SCWA and to be comprised of an elected official appointed by the elected body of each agency signatory to the agreement. Voting to remain the same, i.e. weighted in proportion to average day peak month entitlement and require a clear majority of WAC members.
- T Include language in the agreement regarding provision of information on a timely basis.
- U Review adequacy of current reporting requirements and consider appropriate amendments, including provisions for conducting outside management audits.
- V Memorialize a recent practice of SCWA - namely development of a website and posting of information.
- W Consider alternative voting requirements to: (a) amend the agreement, and (b) for other WAC authorities.”

Note: Alphanumeric designations are same as contained on Framework Issues List.

## Attachment F

### Language to Implement Consensus Reached by the Parties at the Second Negotiation Session (recommended by JONWRM)

Language recommended is shown in strikeout format relative to 11<sup>th</sup> Amended Agreement language.

**1. Regarding Framework Issue A – Over-arching Provision Regarding Planning and Consideration of Environmental Impacts, add a new initial paragraph entitled “3.1 Planning” to “Part 3 – Water Supply” and renumber all subsequent sections in Part 3.**

**3.1 Planning**

*Providing ample opportunity for input from the public, the Agency shall periodically quantify the best possible water resource mix that optimizes provision of a reliable and economical supply of high quality water and related services while promoting a healthy environment. Quantification shall include consideration of all available supplies including conservation, recycling, ground water and surface water; and, take into account levels of reliability (including the reliability of Eel River diversions), watershed needs and environmental impacts. Maximizing opportunities that will result in minimizing or avoiding environmental mitigation and restoration costs shall be a high priority. In undertaking this effort, the Agency shall consider the goals and plans of organizations having a lead role in watershed planning such as the Russian River Watershed Council and the North Bay Watershed Association. The Water Advisory Committee shall determine how frequently this planning effort or elements of this planning effort will be undertaken or updated.*

**2. Regarding the first three sentences of Framework Issue S regarding organization of the WAC, revise Section 5.3 – Composition as follows (note that the voting provisions set off by brackets ([ ]) have not been changed pending resolution of this issue by the Parties):**

**5.3 Composition**

(a) The Water Advisory Committee shall be composed of one *elected* representative selected by each water contractor; *and shall be assisted by a Technical Advisory Committee comprised of one non-elected representative selected by each water contractor. The Water Advisory Committee shall generally meet quarterly as it determines necessary and which shall include two meetings scheduled with the Board of Directors of the Agency. The Technical Advisory Committee shall generally meet monthly as it determines necessary.* [Each water contractor's representative will be allocated a weighted vote proportional to the average day any month water delivery limit set forth in section 3.1(a) applicable to such water contractor. An affirmative vote of said Committee shall require both of the following: (1) the affirmative vote of more than fifty

percent (50%) of the total weighted votes as defined above; and (2) the affirmative vote of at least representatives.] If the Water Advisory Committee does not affirmatively vote to approve any matter before it for a decision, then the matter shall be deemed not approved. ~~The General Manager of the Marin Municipal Water District, or his or her designated representative, may attend and participate, debate, express opinions and present information at meetings of the Water Advisory Committee but shall not have a vote. .~~